

O

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION**

**RODRIGUEZ-GARCIA,**  
*Petitioner,*

**v.**

**UNITED STATES,**  
*Respondent.*

§  
§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO. 5:06-cv-00109**

**OPINION AND ORDER**

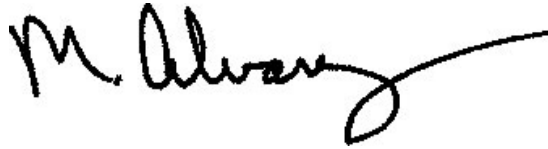
Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. No. 23]. Petitioner currently has a direct appeal, filed May 8, 2006, pending before the United States Court of Appeals for the Fifth Circuit. [Criminal No. 5:05-cr-02506, Doc. No. 20].

Unless extraordinary circumstances are present, a § 2255 motion should not be heard while a direct appeal is pending. *Bowen v. Johnston*, 306 U.S. 19, 26-27 (1939); *see also* 28 U.S.C. § 2255 Proc. R. 5 advisory committee's note 1 (stating that "there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal but . . . the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances").

Petitioner has failed to make the requisite showing of "exceptional circumstances." Therefore, his Motion to Vacate, Set Aside, or Correct Sentence is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED

DONE this 2nd day of August, 2006, in Laredo, TX.

A handwritten signature in black ink, appearing to read "M. Alvarez", with a long, sweeping horizontal line extending to the right.

---

Micaela Alvarez  
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.**